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UNCLAS SECTION 01 OF 02 ANKARA 000977

SIPDIS

DEPT FOR EB/TPP/MTA/IPC - SWILSON/JURBAN AND EUR/SE  
DEPT PASS USTR FOR LERRION/BPECK  
DEPT PASS LIBRARY OF CONGRESS  
DEPT PASS USPTO FOR ELAINE WU  
USDOC FOR ITA/MAC/DDEFALCO

SENSITIVE

E.O. 12958: N/A  
TAGS: [ETRD](#) [KIPR](#) [TU](#)  
SUBJECT: Special 301 - Raise Turkey to Priority Watch List

Ref: (A) State 29549 (B) Ankara 608 and previous  
(C) Ankara 866

1. (U) This cable contains action requests in para 10.

Summary

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2. (SBU) Although there are signs that the GOT is preparing to improve enforcement through a ban on street sales, copyright and trademark piracy has remained persistently high in Turkey. Turkey has also failed to provide data exclusivity protection, or to address policies which discriminate against or disadvantage foreign drug companies. Embassy supports elevating Turkey from the Watch List to the Priority Watch List in the 2004 Special 301 Review, and urges Washington agencies to pursue sustained engagement with the GOT on intellectual property issues. End Summary.

3. (SBU) Post has lobbied the GOT repeatedly at senior levels over the past few years on lack of data exclusivity protection and other issues facing the pharmaceuticals sector, and on improving copyright/trademark enforcement. Thus far, the GOT has not taken major steps on either set of problems. Raising Turkey to the Priority Watch List would send an appropriate signal of concern about gaps in Turkey's IPR regime.

Pharmaceuticals

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4. (SBU) Citing concerns on data exclusivity, patent linkage and market access barriers which could cost member companies USD 600 million this year, the Pharmaceuticals Research and Manufacturers Association (PhRMA) recommended elevating Turkey to Priority Foreign Country status in its recent Special 301 submission. The GOT has said that it plans to take a decision on data exclusivity soon, but the Turkish proposal is likely to include a lead time of at least two or three years and might be limited to only a few years of protection initially (ref B). Furthermore, the GOT has at times disputed the U.S. position that the WTO TRIPS Agreement Article 39.3 on protecting test data requires data exclusivity.

5. (U) A February 14 GOT decree limits pharmaceuticals prices in Turkey to a maximum of 90 percent of the average of the lowest two prices prevailing in a group of five European countries. While the measure does not appear to have an intellectual property angle, it may contain WTO-inconsistent provisions giving preference to local manufactures, does not set objective pricing criteria or remedy mechanisms for companies applying under the decree and worsens an already problematic policy environment for the industry.

Copyright and Trademarks

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6. (U) Both the International Intellectual Property Alliance (IIPA) and the International AntiCounterfeiting

Coalition (IACC) recommend that Turkey remain on the Watch List based on continued high levels of piracy and counterfeiting, and call on the GOT to improve enforcement. Embassy agrees that enforcement has been the key failing in Turkey's copyright/trademark regime.

17. (U) The Culture Ministry has drafted legislation aimed at strengthening IPR protection. The bill, which has been vetted by Parliament's Education Commission, would ban street sales of all copyright products and authorize all law enforcement units to make seizures (ref C and previous). However, it would also reduce penalties for piracy, on the rationale that current penalties are perceived by the judicial system to be too severe and are thus not applied at all. Although IIPA members have some reservations about the bill, Turkish artists have publicly expressed support for the bill.

18. (U) The GOT intends to join the WIPO "Internet" treaties in the near future. The treaties are currently under review at MFA's legal division. While encouraging GOT officials to join the treaties, Embassy has pointed out to the Culture Ministry that implementing legislation will be necessary to address some gaps in current copyright law. Culture Ministry officials are of the opinion that current Turkish law, along with the amendments currently under consideration, is sufficient to implement the treaties, but they are receptive to a dialogue with USG experts on this question.

19. (U) A decree directing use of authorized software by GOT agencies was issued in 1999.

Action Request  
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110. (SBU) Over the last few years, Embassy has pressed the GOT on IPR concerns at senior levels without results on pharmaceuticals issues, and with only limited results in the copyright/trademark areas. We support raising Turkey from the Watch List to the Priority Watch List in the 2004 Special 301 review. With appropriate, sustained engagement with Washington participation on IPR issues, we believe this step could prod the GOT to action. AUSTR Novelli's January letter to Foreign Trade Undersecretary Kayalar in January was helpful in raising the profile of this issue. Embassy recommends that Washington agencies also consider dispatching an interagency IPR delegation to Ankara, and sending high-level correspondence, such as a joint letter from USTR Zoellick and Commerce Secretary Evans to State Minister Tuzmen.  
Edelman